

Before the
Commonwealth of Massachusetts
Department of Telecommunications & Energy

In the Matter of

Global NAPs, Inc.

Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts f/k/a New England Telephone & Telegraph Co., Inc. d/b/a Bell Atlantic Massachusetts

Docket No.:

PETITION FOR ARBITRATION

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On Behalf of Global NAPs, Inc.

July 30, 2002

TABLE OF CONTENTS

I. THE PARTIES	1
II. JURISDICTION AND APPLICABLE LEGAL STANDARD.....	3
III. NEGOTIATIONS	4
IV. RESOLVED ISSUES	9
V. UNRESOLVED ISSUES AND THE POSITIONS OF THE PARTIES	9
Issue 1: SHOULD EITHER PARTY BE REQUIRED TO INSTALL MORE THAN ONE POINT OF INTERCONNECTION PER LATA?	12
Issue 2: SHOULD EACH PARTY BE RESPONSIBLE FOR THE COSTS ASSOCIATED WITH TRANSPORTING TELECOMMUNICATIONS TRAFFIC TO THE SINGLE POI?	14
Issue 3: SHOULD VERIZON’S LOCAL CALLING AREA BOUNDARIES BE IMPOSED ON GLOBAL, OR MAY GLOBAL BROADLY DEFINE ITS OWN LOCAL CALLING AREAS?	18
Issue 4: CAN GLOBAL ASSIGN TO ITS CUSTOMERS NXX CODES THAT ARE “HOMED” IN A CENTRAL OFFICE SWITCH OUTSIDE OF THE LOCAL CALLING AREA IN WHICH THE CUSTOMER RESIDES?	21
Issue 5: IS IT REASONABLE FOR THE PARTIES TO INCLUDE LANGUAGE IN THE AGREEMENT THAT EXPRESSLY REQUIRES THE PARTIES TO RENEGOTIATE RECIPROCAL COMPENSATION OBLIGATIONS IF CURRENT LAW IS OVERTURNED OR OTHERWISE REVISED?	24
Issue 6: WHETHER TWO-WAY TRUNKING IS AVAILABLE TO GLOBAL AT GLOBAL’S REQUEST.	26
Issue 7: IS IT APPROPRIATE TO INCORPORATE BY REFERENCE OTHER DOCUMENTS, INCLUDING TARIFFS, INTO THE AGREEMENT INSTEAD OF FULLY SETTING OUT THOSE PROVISIONS IN THE AGREEMENT?	26
Issue 8: SHOULD THE INTERCONNECTION AGREEMENT REQUIRE GLOBAL TO OBTAIN EXCESS LIABILITY INSURANCE COVERAGE OF \$10,000,000 AND REQUIRE Global TO ADOPT SPECIFIED POLICY FORMS?	29
Issue 9: SHOULD THE INTERCONNECTION AGREEMENT INCLUDE LANGUAGE THAT ALLOWS VERIZON TO AUDIT GLOBAL’S “BOOKS, RECORDS, DOCUMENTS, FACILITIES AND SYSTEMS?”	30
VI. CONCLUSION	32

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England Telephone & Telegraph Co.)	
d/b/a Bell Atlantic – Massachusetts)	

PETITION FOR ARBITRATION

Pursuant to Section 252(b) of the Telecommunications Act of 1996¹ (the “Act”), Global NAPs, Inc. (“GNAPs” or “Global”) hereby petitions the Massachusetts Department of Telecommunications & Energy (“Department”) for arbitration of unresolved issues arising out of the interconnection Agreement negotiations between Global and Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts Inc. f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic – Massachusetts. Global requests that this Commission resolve each issue identified in Section V below by ordering the Parties to incorporate Global’s position into the Parties’ final interconnection Agreement. In support of this petition, Global states:

I. THE PARTIES

1. Global is a facilities-based competitive local exchange carrier (“CLEC”) that, together with its affiliates, provides local exchange and interexchange

¹ 47 U.S.C. § 252(b).

telecommunications services in a number of states. Under the Act, Global is a “telecommunications carrier” and “local exchange carrier.”² Global is a Delaware Corporation with its principal place of business at 10 Merrymount Road, Quincy, Massachusetts, 02169. The Commonwealth of Massachusetts has certified Global to provide intrastate local exchange and exchange access services throughout Massachusetts.³ Global is currently in the process of developing its operations in Massachusetts.

2. Global’s representatives are as follows:

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3. Verizon is an incumbent provider of local exchange services within the Commonwealth of Massachusetts. Verizon is, on information and belief, a wholly-owned subsidiary of Verizon Communications Inc., a Delaware corporation with its

² See 47 U.S.C. §§ 153(26), 153(44).

³ *In the Matter of the Petition of Global NAPs, Inc. for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services*, Docket No. TE98060386, Telecommunications Order of Approval (June 21, 1999).

principal place of business at 1095 Avenue of the Americas, New York, New York 10036. Verizon is, and has been at all material times, an Incumbent Local Exchange Carrier (“ILEC”) in the Commonwealth of Massachusetts as defined by Section 251(h) Act.⁴

4. Verizon’s primary representatives during the interconnection negotiations have been:

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II. JURISDICTION AND APPLICABLE LEGAL STANDARD

5. This Commission has jurisdiction over GNAP’s petition for arbitration pursuant to Section 252 of the Act.⁵ Under the Act, either party to an interconnection negotiation may petition the relevant state commission for arbitration of open issues if

⁴ See 47 U.S.C. § 251(h).

⁵ See 47 U.S.C. §§ 252 (b)-(c). Section 252(c) of the Act requires that a state regulatory authority resolving open issues through arbitration “ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251; [and] establish any rates for interconnection, services, or network elements according to subsection (d) [of section 252] and provide a schedule for implementation of the terms and conditions by the parties to the agreement.” 47 U.S.C. § 252.

negotiations fail to yield an agreement.⁶ Under Section 252(b)(1), a party's request for arbitration to the state commission must be made between the 135th day and the 160th day after the date the ILEC receives a request for negotiations under Section 252(a) of the Act. The 160th day is June 3rd, 2002, by mutual agreement of the parties. Accordingly, this petition is timely filed. Global requests that the Department conduct an evidentiary hearing in this proceeding.

6. This arbitration must be resolved under the standards established in 47 U.S.C. §§ 251 and 252, applicable rules and orders issued by the Federal Communications Commission ("FCC"), and applicable statutes, rules and orders of this Commission. Accordingly, this Commission should make an affirmative finding that the rates, terms, and conditions that it prescribes in this arbitration proceeding are consistent with the requirements of applicable federal and state law.

III. NEGOTIATIONS

7. Global has had continuing negotiations of interconnection agreements to cover interconnection of the Parties' networks in several states, including California, Delaware, Florida, Illinois, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island and Virginia. At the outset of negotiations, Verizon confirmed that its proposed interconnection agreement would govern the terms of interconnection in each state in which Global requested interconnection with Verizon except for state specific language that Verizon provided in a separate chart. For that reason, the Parties agreed that the outcome of the negotiations generally would bind the Parties' respective operations in these same states, save for the state specific

⁶ 47 U.S.C. 252(b).

requirements.

8. Formal negotiations between the Parties commenced on January 19, 2001.⁷ A copy of Global's request to initiate negotiations and letters of agreement extending such negotiations are attached as Exhibit A.

9. Although there are outstanding negotiation issues between the Parties, to preserve its rights and opportunities under federal statute, Global determined to file the instant petition and to keep negotiating with Verizon. To the extent the Parties reach further agreement, thereby reducing or narrowing the issues Global wishes this Department to arbitrate, Global will provide immediate notice to this Department.

10. Broadly speaking, negotiations have focused on the following issues: business processes and financial requirements, methods of interconnection and financial responsibility arising from methods of interconnection, local calling areas, tariff terms, use and deployment of NXX codes, payment for ISP-bound traffic, provisioning of dark fiber and trunking requirements.⁸

11. In order to accommodate Verizon, Global agreed to negotiate the terms of a new interconnection agreement by proposing revisions to Verizon's proposed template Interconnection Agreement ("Template Agreement") as the base-negotiating document. The Parties then attempted to negotiate changes to the Template Agreement. As described below, although there is no dispute over the vast majority of terms in the agreement, the Parties have reached an impasse on several key issues.

⁷ GNAPs and Verizon extended its negotiation period several times. However, both Parties agreed to have the Massachusetts arbitration window close on April 10, 2002, making this petition timely filed under the Act. *See* 47 U.S.C. § 252(b)(1); Exhibit A, Negotiation Letters.

⁸ As mentioned above, the Parties continue to negotiate several matters and GNAPs is hopeful that such discussions will further refine the issues the Commission will be asked to resolve.

12. A “redline” draft of the interconnection agreement reflecting the Parties’ respective positions on these key issues is filed as Exhibit B to this petition. Agreed upon language will be shown in normal type. Disputed or unresolved language will be underlined or will shown as strike through, embodying the unresolved issues in this petition.

13. In Section V of this Petition, “Unresolved Issues,” Global discusses all of the key unresolved issues in detail. However, this Petition does not necessarily identify all of the provisions in the attached “redline” draft of the Template Agreement that affect these key issues. For that reason, Global requests that this Commission resolve this dispute by (i) adopting an interconnection agreement between Global and Verizon reflecting the undisputed contract language shown in Exhibit B; and (ii) resolving the disputed issues on a policy level; and (iii) affirmatively ordering the Parties to implement contract language embodying these policy decision; including Global’s proposed language contained in Exhibit B.

14. Verizon has proposed a resolution of issues outstanding concerning whether (1) Global may designate a single point of interconnection within a LATA subject only to technical feasibility and (2) should each party be responsible for the costs of carrying traffic on its respective side of this (or these) point(s) of interconnection. Global has reviewed Verizon’s proposed language which approaches, but does not completely resolve, these two issues. Global is hopeful that satisfactory language can be agreed upon to resolve these two issues prior to hearing on these matters.

15. Global initiated the negotiation process with Verizon through several different 252(a) letters sent earlier this year. Verizon’s Template Agreement was first received by

Global on or about April 23, 2001 and on or about October 19, 2001 an updated Template Agreement was received.

16. On or about September 10, 2001, Global provided Verizon its first mark up of the Template Agreement and attempted to arrange formal negotiations via teleconference. In order to expedite good faith negotiations, Global proposed teleconferences to discuss proposed revision to the Verizon Template Agreement. Verizon's representatives stated that they were not ready to discuss Global's changes to the Template Agreement, and that they would update Global of their availability to discuss the redlined Template Agreement.

17. Several weeks later, the Parties again discussed a negotiation schedule and Verizon stated that it had an updated Template Agreement that should be used as the base document for the Parties' negotiations. This updated Template Agreement was different in several respects from the version Global had already redlined. Verizon did not indicate where these changes were located in the new document. However, Global agreed to redline this new template for the Parties' negotiations and invested its own resources in finding the changes to the Template Agreement and providing redlining to the updated Template Agreement.

18. Approximately six weeks after Global's request for substantive negotiations in September, Verizon found that it was prepared for negotiations, and the Parties came to agreement on a weekly teleconference negotiation schedule. On October 19, 2001, the first of these weekly negotiation sessions occurred. The major participants on this call and the following negotiation calls were: Greg Romano, and Joseph Greenwood of Verizon; and John Dodge, William J. Rooney, James Scheltema, and Laura Schloss of, or

on behalf of, Global.

19. On October 23, 2001, Global provided the updated redlined Template Agreement to Verizon. Using the updated redlined Template Agreement, the Parties conducted several other negotiation sessions via teleconference in October, 2001 and on November 2, 2001. Since the Parties were not making expeditious progress on most of the issues, Global decided after the November 2, 2001 session to narrow the number of issues it was going to negotiate with Verizon, reserving its right to revisit other issues if and when they became critical to Global's business plan. Accordingly, Global accepted Verizon's Template Agreement language on all issues that were not embodied in a memo regarding Global's critical interconnection issues.⁹ The majority of Global's critical issues consist of the unresolved issues between the Parties in this arbitration petition.

20. On November 9th, the Parties conducted another negotiation session regarding Global's critical interconnection issues. Global proposed to have the Parties meet at a location of Verizon's choosing to finish the negotiation of the Agreement. Global proposed a several day negotiation session to complete the discussion of outstanding issues between the Parties. Verizon rejected this proposal and contended that teleconferences would better suit Verizon to negotiate the remainder of issues between the Parties.

21. On November 15, 2001 and November 20, 2001, the parties held additional teleconference negotiation sessions. The session on November 30th was cancelled due to a familial obligation of one of Verizon's key negotiators. On December 7th, the Parties reconvened and continued to discuss Global's identified critical issues. On December

11th, the Parties conducted a negotiation session solely regarding the dark fiber provisions of the Template Agreement. On December 12th, the Parties discussed the rest of Global's critical issues with the Template Agreement language.

22. Most recently, Verizon submitted a proposed interconnection agreement which varied considerably from those offered to Global in other states. Specifically, Verizon proposed resolution of the issues of delineated in paragraph 14 (above). In light of this new proposed contract, Verizon and Global agreed upon a modification of the arbitration schedule such that the arbitration "window", *i.e.*, filing date, became July 30, 2002.

IV. RESOLVED ISSUES

23. The Parties do not dispute a number of issues, including the general terms and conditions of the Agreement, the terms found in the resale, and unbundled network elements ("UNEs") (save for numbering portions of Verizon's Template Agreement).

24. The Parties agreed on the dispute resolution provision of the Template Agreement, and agreed to excise the Joint Work Product provision in the Template Agreement from the Agreement.

25. The Parties continue to negotiate over many of the terms raised in this Petition in the hopes that they can be removed from the arbitration proceeding.

V. UNRESOLVED ISSUES AND THE POSITIONS OF THE PARTIES

26. There are several important inter-related issues on which the Parties have not yet reached a resolution.

27. First, the Parties cannot resolve the method by which they will interconnect

⁹ Additional issues were added to this memo on November 19, 2001 via an e-mail to Joe Greenwood and Greg Romano. Verizon stated no objection to the addition of new critical issues

their networks and the resulting cost of transport to each party under that interconnection method. Federal law clearly establishes Global's right to establish a single point of interconnection ("POI")¹⁰ with Verizon in each LATA in which it interconnects with Verizon.¹¹ Federal law also states that Verizon bears full financial responsibility for delivering Global-bound traffic from Verizon's own customers to the single POI.¹² The New York Commission decision is consistent with federal law and Global's position that each party should bear its own costs for traffic on its side of the point of interconnection ("POI").¹³

28. A second area of dispute concerns Global's right to define its own local calling areas and to utilize numbering resources in a manner that allows it to offer competitive choices to Massachusetts consumers. Global contends that federal law permits, and sound public policy requires, that CLECs like Global be allowed to define their own local calling areas broadly and to utilize numbering resources, specifically

in the November 20, 2001 negotiation session.

¹⁰ For the purposes of GNAPs' petition and interconnection with Verizon, the Interconnection Point ("IP") and single POI are interchangeable because of the architecture of GNAPs' network. Verizon's Template Agreement defines these two terms differently and requires GNAPs to transport GNAPs' originating traffic to multiple Verizon IPs within a LATA. GNAPs employs a fiber optic meet point to interconnect with Verizon that establishes one IP and one POI per LATA for the mutual exchange of traffic. In this situation, this single IP/POI determines the financial responsibility of both Parties.

¹¹ *See US West Communications, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112 (9th Cir. 1999) (affirming arbitration decision that required Parties to adopt a single point of interconnection based on the statutory requirement that LECs be permitted to interconnect at any technically feasible point).

¹² *See In the Matter of Developing a Unified Inter-carrier Compensation Regime*, Notice of Proposed Rulemaking, FCC 01-132, CC Docket No. 01-92, 16 FCC Rcd 9610, ¶¶ 70, 72 (Apr. 27, 2001) ("Inter-carrier Compensation NPRM"); *see also In the Matter of Joint Application by Sprint - Florida Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, FCC No. 01-29, CC Docket No. 00-217, 16 FCC Rcd 6237, ¶¶ 233-235 (Jan. 22, 2001) ("Oklahoma/Kansas 271 Order").

distant or “virtual” NXX codes, in a manner that guarantees competitive communications choices for Massachusetts consumers.¹⁴ On May 22nd, the New York Public Service Commission found that allowing Global to define LATA-wide calling areas and utilize virtual NXX codes is permitted. Specifically, it found that “[t]he availability of virtual NXXs at this time appears to be an efficient method to ensure that customers in all localities in the state have competitive choices for access to local calling to the internet.”¹⁵

29. Because Verizon is obligated to deliver traffic to Global’s single POI at its expense (and wherever technically feasible), Verizon’s costs are unaffected by the physical location of the Global customers to which Verizon-originated traffic might be delivered. A Public policy which allows Verizon to avoid its intercarrier compensation obligations or to impose access charges on Global (based on either the physical location of Global’s customers or the NPA-NXX codes that characterize those customers’ telephone numbers) would stifle the development of local exchange competition, including competition based on the size and nature of local calling areas.

¹³ *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Verizon New York, Inc., Order Resolving Arbitration Issues*, Case 02-C-0006 (May 22, 2002) at 10.

¹⁴ *See, e.g., Implementation of Section 254(g) of the Communications Act of 1934, Policy And Rules Concerning The Interstate Interexchange Marketplace*, Notice of Proposed Rulemaking, FCC 99-43, CC Docket No. 96-61, 14 FCC Rcd 6994 (1999) (discussing the consumer benefits of wide-area calling plans in wireless sector); *see also In the Matter of the Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, 2001 Ky. PUC LEXIS 873 (Ky. P.U.C. Mar. 14, 2001) (ruling that virtual NXX calls shall be treated as local calls when the customer is physically located within the same LATA as the calling area with which the telephone number is associated).

¹⁵ *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Verizon New York, Inc., Order Resolving Arbitration Issues*, Case 02-C-0006 (May 22, 2002) at 14.

Issue 1: SHOULD EITHER PARTY BE REQUIRED TO INSTALL MORE THAN ONE POINT OF INTERCONNECTION PER LATA?

Global's Position: *No. Global is not required to install more than one POI per LATA and may establish a single POI per LATA. Global has the right to designate any technically feasible point at which both Parties must deliver traffic to the other Party.*

Verizon's Position: *Global must establish multiple POIs within each of Verizon's local exchange areas to exchange traffic between the Parties.*

30. The FCC has recently interpreted the *Act* consistent with Global's position:

Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA.

FCC Virginia Order ¶ 52.

31. Thus, it is clear that under federal law, a CLEC may elect to interconnect with an ILEC at any single, technically feasible point on the ILEC's network. The single POI serves as the point at which the CLEC delivers ILEC-bound traffic. On the ILEC's side of the single POI, the ILEC is responsible for transporting telecommunications traffic bound for CLEC customers to this single POI at its own expense. As the FCC has further explained:

Section 251(c)(2) of the *Act* gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible *point* on that network, *rather than* obligating such carriers to transport traffic to less convenient or efficient interconnection *points*. Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic.¹⁶

32. The *Act* permits CLECs to interconnect with ILECs at any technically feasible

¹⁶ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, ¶ 209 (1996) ("Local Competition Order") (emphasis added); see also *Application of Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*,

point.¹⁷ State Commissions have almost universally specifically ruled that a CLEC has the option to designate a single POI in each LATA.¹⁸ In addition, the United States Courts of Appeals for the Third and Ninth Circuit have explicitly ruled that a CLEC has the right to establish a single POI per LATA for the mutual exchange of telecommunications traffic.¹⁹ The Third Circuit recently explained:

The decision where to interconnect and where not to interconnect must be left to WorldCom, *subject only to concerns of technical feasibility*. Verizon has not presented evidence that it is not technically feasible for WorldCom to interconnect at only one point within a LATA. Nor has Verizon shown that it is technically necessary for WorldCom to interconnect at each access tandem serving area. *The PUC's requirement that WorldCom interconnect at these additional points is not consistent with the Act*²⁰

Thus, although the Parties may agree to multiple POIs over time as traffic and other conditions warrant, in no case is Global required to establish more than one POI per LATA.²¹

Memorandum Report and Order, FCC 00-238, CC Docket No. 00-65, 15 FCC Rcd 18354, ¶ 78 (June 30, 2000) (“Texas 271 Order”).

¹⁷ 47 U.S.C. § 251(c)(2)(B).

¹⁸ *See Joint Petition of AT&T Communications of New York, Inc., et. al. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.*, Case 01-C-0095, 2001 N.Y. PUC LEXIS 495, * 44-45 (July 30, 2001) (“AT&T Arbitration Order”); *see also Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case 98-C-1357, 2001 N.Y. PUC LEXIS 293, * 222 (May 16, 2001).

¹⁹ *See MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491 (3rd Cir. Nov. 2, 2001) (ruling that it is technically feasible for a CLEC to interconnect at only one point within a LATA and that Verizon failed to prove that it is technically necessary to interconnect at each access tandem serving area); *see also, US West Communications, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112 (9th Cir. 1999) (affirming arbitration decision that required Parties to adopt a single POI based on the statutory requirement that LECs be permitted to interconnect at any technically feasible point).

²⁰ *MCI Telecommunications Corp.*, 271 F.3d at 518.

²¹ GNAPs is not suggesting that the Parties be barred from voluntarily establishing additional POIs if they both agree that doing so would be convenient. GNAPs *is* suggesting that Verizon be barred from *requiring* GNAPs to interconnect at multiple points. In this regard, it is significant that the

33. The Commission should issue its decision on this issue by expressly ruling that Global may establish a single POI, including but not limited to a fiber optic meet-point, allowing efficient fiber-optic facilities for the exchange of all traffic. Further, the Commission should order the Parties to implement Global's proposed contract language included in Exhibit B. *See* Agreement, Glossary, Sections 2.45, 2.66; Interconnection Attachment, Sections 2.1, 2.1.2, 2.3, 2.4, 3, 5.2.2, 5.3, and 7.1.1.1.

Issue 2: SHOULD EACH PARTY BE RESPONSIBLE FOR THE COSTS ASSOCIATED WITH TRANSPORTING TELECOMMUNICATIONS TRAFFIC TO THE SINGLE POI?

Global's Position: *Yes. Each carrier is financially responsible for transporting telecommunications traffic to the single POI.*

Verizon's Position: *No. Each carrier is responsible for transporting telecommunications traffic to the boundary of Verizon's local exchange area. Verizon is not responsible for the transportation of the telecommunications traffic to a POI located outside of this area.*

34. The FCC has ruled that each interconnecting party must transport its originating traffic to the single POI at its own cost.²² After review of exhaustive testimony filed by Verizon and three CLECs and multi-week live hearings, the FCC issued a definitive recitation of the relevant federal law and interpreted this law consistent with Global's position that Verizon should be responsible for all costs on its network on its side of the point of interconnection. The discussion of the issue preceding its determination indicates that the issue Global framed is identical as is Verizon's response, to that presented by CLECs in the Virginia Arbitration. The result, therefore, should also

obligation in Section 251(c)(2) to allow a requesting carrier to interconnect at any technically feasible point is limited to ILECs.

²² *See, e.g.,* Inter-carrier Compensation NPRM at ¶ 70; *see also* Oklahoma/Kansas 271 Order at ¶¶ 233-35.

be identical. The FCC found:

The Commission's rules implementing the reciprocal compensation provisions in section 252(d)(2)(A) prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic subject to reciprocal compensation that originates on the LEC's network.¹¹⁹ Furthermore, under these rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic.

* * *

Verizon's interconnection proposals require competitive LECs to bear Verizon's costs of delivering its originating traffic to a point of interconnection beyond the Verizon-specified financial demarcation point, the IP. Specifically, under Verizon's proposed language, the competitive LEC's financial responsibility for the further transport of Verizon's traffic to the competitive LEC's point of interconnection and onto the competitive LEC's network would begin at the Verizon-designated competitive LEC IP, rather than the point of interconnection.¹²⁴ By contrast, under the petitioners' proposals, each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC. The petitioners' proposals, therefore, are more consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point.¹²⁵ Accordingly, we adopt the petitioners' proposals.

FCC Virginia Order ¶¶ 52, 53.

35. Thus, each Party is responsible for transporting telecommunications traffic on its "side" of the POI, and is obligated to compensate the terminating Party for the transport and termination of its originating traffic from the POI to the designated end user via reciprocal compensation. This position – based on FCC rules and decisions²³ – is consistent with this Commission's policy to encourage competition in the provision of local exchange services, is equitable to both Parties, and is supported by federal law.

36. Global requests that the Commission find that Global is not responsible for the transport costs associated with Verizon's originating traffic, just as the FCC has done when interpreting federal law in the context of a state arbitration proceeding.²⁴ Accordingly, Global requests that the Commission prohibit Verizon from imposing its transport costs (which are a result of Verizon's network design decisions, not Global's) associated with Verizon's originating traffic. Verizon, the incumbent carrier, should be financially responsible for getting its customers' traffic to the single POI. Furthermore, from a policy perspective, it is appropriate to require carriers to transport their originating traffic to their side of the single POI at their own cost.

37. Verizon proposes that Global establish multiple POIs in each LATA at which Global will receive traffic from Verizon. Moreover, the POIs that Verizon would have Global establish for the receipt of traffic from Verizon would be at locations on Verizon's network at or near the originating end office. The purpose and effect of Verizon requiring this patchwork of POIs is to shift to GNAPs the cost of delivering Verizon originated traffic to GNAPs. This purpose is made clear by Verizon's position that if GNAPs does not establish the requisite patchwork of POIs, GNAPs must pay for the additional transport costs to deliver originating traffic to the single POI.

²³ See 47 C.F.R. §§ 51.305(a)(2), 51.703(b); *see also* Oklahoma/Kansas 271 Order at ¶¶ 233-35 (these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network).

²⁴ *Memorandum Opinion and Order, In the Matter of the Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218; *In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration*, CC Docket No. 00-249; *In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding*

38. The FCC has ruled that each interconnecting party must transport its originating traffic to the single POI at its own cost.²⁵ Other Commissions have also ruled that Verizon should be responsible, both operationally and financially, for transporting the traffic on its network. Recently the New York Commission rejected Verizon's attempt to avoid paying these costs and explained that it would "keep in place the existing framework that makes each party responsible for the costs associated with the traffic that their respective customers originate until it reaches the point of interconnection."²⁶ In so ruling the Commission explained that it would continue to apply its policy, reached in the Competition II proceeding, "that a carrier is responsible for the costs to carry calls on its own network."²⁷

39. It is Global's position that each party is equally responsible for absorbing its costs of carrying traffic on its side of the network to the Parties' single POI. A single, LATA-wide, fiber-optic-based, high-capacity POI effectively and efficiently allows each party to arrange facilities on its side of the POI. Each carrier has incentive to maximize the capabilities of its own network (and resultant competitive offerings) rather than shift costs to the other carrier. Parties would be responsible for providing service according to the capabilities of their own networks.

40. The Commission should resolve this issue on a policy level by expressly ruling that: (a) the Parties shall establish a single POI allowing efficient fiber-optic facilities for the exchange of all traffic; (b) physical arrangements for routing traffic to

Interconnection Disputes with Verizon Virginia Inc., CC Docket No. 002-51 (DA 02-1731) (Rel. July 17, 2002) ("*FCC Virginia Order*").

²⁵ See, e.g., Intercarrier Compensation NPRM at ¶ 70; see also Oklahoma/Kansas 271 Order at ¶¶ 233-35.

²⁶ See AT&T Arbitration Order, 2001 N.Y. PUC LEXIS 495, at * 50 (July 30, 2001).

that POI shall be under the control of the originating Party (with due allowance for maintaining adequate facilities to prevent unacceptably high blocking levels), and at that Party's expense; and (c) the physical arrangements for routing traffic received at the POI for delivery to the called Party shall be under the control of the terminating carrier, but subject to payment by the originating Party of reciprocal compensation. Further, the Commission should order the Parties to implement Global's proposed contract language included in Exhibit B.²⁸ See Agreement, Interconnection Attachment, Sections 7.1.1.2 and 7.1.1.3 and related sections cited elsewhere in this Petition and throughout the Agreement.

Issue 3: SHOULD VERIZON'S LOCAL CALLING AREA BOUNDARIES BE IMPOSED ON GLOBAL, OR MAY GLOBAL BROADLY DEFINE ITS OWN LOCAL CALLING AREAS?

Global's Position: *Verizon's Template Agreement should not constrain Global from defining its own local calling areas, including defining its own local calling area on a LATA-wide basis.*

Verizon's Position: *Global's local calling areas must mirror Verizon's existing legacy calling areas.*

41. By requiring each Party to be responsible for facilities and routing on its side of the POI, the Commission will lift the economic constraints that currently bar Global from offering to its customers a LATA-wide local calling service. Accordingly, Global should be allowed to broadly define its own local calling area, possibly as large as a single LATA, in part because there is no economic or technical reason for local calling

²⁷ *Id.*

²⁸ In the event that despite the overwhelming weight of evidence, this Commission determines there should be a subsidy from Global to Verizon for transport of Verizon-originating traffic to the POI, it is critical that this subsidy be based on *incremental* costs rather than on non-cost based retail rates.

areas to be any smaller than a LATA. Further, Global's position does not attempt to dictate, or affect, how Verizon chooses to divide its retail service offerings into "local" or "toll" calls.

42. By the same token, Global should not be economically constrained by Verizon's Template Agreement to mirror Verizon's legacy local calling areas. Verizon can point to no economic or technical reason for restricting local calling area size to anything smaller than an entire LATA, though it may have concerns with resulting competitive pressures of LATA-wide local calling.

43. To the contrary, the Parties' interconnection Agreement should reflect the economic and technical reality that the distinction between "local" and "toll" calls — especially on an intra-LATA basis — has become artificial.²⁹ Doing so will provide Global, a small CLEC, with the maximum economic flexibility to compete with Verizon, the incumbent carrier, by offering wider calling area options than those currently offered by Verizon and other ILECs. Many state commissions have agreed with Global's position on this issue.³⁰

²⁹ That is, current economic and technical conditions in the industry do not support continued reliance on small local calling areas. Instead, in technical and economic terms, there is no particular reason for Verizon to maintain small local calling areas, and certainly no reason whatsoever for a new competitor, not saddled with Verizon's legacy network architecture and other decisions, to do so. Thus, in the current economic and regulatory environment the only real distinctions between "local" and "toll" calls relate to LEC pricing options, not any meaningful reflections of technology or economics.

³⁰ See Memorandum from Division of Competitive Services and Division of Legal Services, Florida Public Service Commission to Director, Division of the Commission Administrative Services, Docket No. 000075-TP 39 (Nov. 21, 2001) *available at* <http://www.psc.state.fl.us/psc/dockets/index.cfm> (decision concerning Docket No. 000075-TP wherein the Staff recommends that Parties be permitted to negotiate the definition of local calling areas for the purposes of reciprocal compensation but where negotiations fail, the local calling area should be defined as "all calls that originate and terminate in the same LATA") (Staff's position was adopted in a Public Agenda Meeting, but has not yet been released in written form by the Commission); *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*; *Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service*, Decision No. 99-09-029; Rulemaking

44. Verizon's position appears to be that its existing local calling area designations are embedded within its network facilities. However, if Global is forced to conform its network and operations to Verizon's network, Global will incur significant uneconomic expense. Verizon's proposed Template Agreement forces Global to accept inefficient interconnection architecture choices and prohibits Global from offering an economically viable LATA-wide local calling area service. This occurs because the Agreement extends Verizon's *retail* pricing practices and policies, which distinguish between "local" and "toll" calls despite their virtually identical cost, into its *wholesale* interconnection relationships with Global and other CLECs.

45. For these reasons, the Commission should resolve this issue by ruling that carriers may define their own local calling areas, and ordering the Parties to adopt language that does not economically prohibit Global from offering LATA-wide local calling service to its customers. Specifically, the Commission should allow Global to define its own local calling areas in a manner that allows it to offer competitive choices to Massachusetts consumers.

46. This policy determination will drive a number of specific changes throughout Verizon's Template Agreement. Therefore, the Commission should adopt this policy decision in this arbitration proceeding and order the Parties to implement Global's proposed contract language included in Exhibit B. *See* Agreement, Glossary Sections

No. 95-04-043, Investigation No. 95-04-044, 1999 Cal. PUC LEXIS 649 *25 (Cal. P.U.C. Sept. 2, 1999) (stating that enhanced local calling area offerings are technologically and economically efficient); *In Re Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI, 1996 Ohio PUC LEXIS 361 (Ohio P.U.C. June 12, 1996) ("[CLECs] should be permitted to establish their own local calling area which can arguably vary from the ILECs. As pointed out by staff, end users should ultimately benefit from this proposal because they will have the ability to compare providers based not only upon price, quality, and perceived value but upon calling area as well.").

2.34, 2.47, 2.56, 2.77, 2.83, 2.91; Interconnection Attachment Sections 2, 6.2, 7.1, 7.3.4, and 13.3.

Issue 4: CAN GLOBAL ASSIGN TO ITS CUSTOMERS NXX CODES THAT ARE “HOMED” IN A CENTRAL OFFICE SWITCH OUTSIDE OF THE LOCAL CALLING AREA IN WHICH THE CUSTOMER RESIDES?

Global’s Position: *The primary function of NXX codes is for network traffic routing, not rating, purposes. Accordingly, NXX codes no longer need to be associated with any particular physical customer location and Global should be allowed to assign NXX codes in a manner that fosters competitive choices for customers.*

Verizon’s Position: *The Commission should not allow calls to end user customers with NXX codes linked to a certain rate center to be treated as local calls unless those end user customers actually maintain a physical presence in that rate center. In addition, Global must pay some amount of costs that Verizon claims to incur in originating calls to customers who are located outside the rate center.*

47. A telephone number contains NXX codes that make up the first three numbers of the telephone number after the area code designation (e.g., (252) NXX-1234). The three numbers that make up the NXX code historically have linked the telephone number to a particular central office near the customer’s actual physical location. These codes historically provided routing and billing information to the ILEC.

48. Technology, however, has changed this dynamic. “Virtual” NXX codes now can be used to call a person with a particular NXX and that person need not be located near the central office historically associated with that NXX. Moreover, coupled with advances in number portability technology and today’s powerful billing software, any LEC can seamlessly bill a virtual NXX call as a local call regardless of geography even if it crosses ILEC-defined local calling areas. Just as wireless subscribers now enjoy local calling areas that span regions, wireline subscribers should be allowed to enjoy the same

benefits.

49. Taken together, these technological advances could permit carriers such as Global to offer Massachusetts wireline customers calling plans competitive with those now enjoyed by customers of wireless carriers.³¹ Verizon is attempting to thwart these developments by imposing toll charges on calls that cross its local calling areas, or subjecting such calls to access or transit charges.

50. The Parties' Agreement should not contain provisions that attempt to link the NXX code of the telephone number assigned to a particular customer with the location of that customer's premises or Customer Premises Equipment ("CPE"). Both Parties should be free to make retail offerings that define a customer's local calling privileges narrowly or broadly. By restricting the assignment of NXX codes to the customers' physical locations, Verizon would limit its competitors' ability to provide new service offerings and to define larger local calling areas.

51. Recently the New York Commission reaffirmed an earlier ruling that CLECs can use virtual NXXs in the manner described above. Specifically, the Commission explained that:

CLECs are permitted to use "virtual NXXs" that allow a CLEC to activate a telephone number (NXX) in an exchange where it has no physical presence. Calls from the local calling area of the

³¹ Though Verizon's access revenues might present a superficial concern, it should be noted that federal policy favors abolishing such charges. See, e.g., *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92, ¶¶ 11-18 (rel. April 27, 2001) (Access charges permit regulatory arbitrage, allow terminating access monopolies, distort the structure and level of end-user charges, and distort an entity's subscription decision creating incentives for entities to charge more for off-net calls, thereby promoting monopolies.) Moreover, Verizon's parent company, Verizon Communications Inc., has already won intraLATA authority in New York, Pennsylvania, Connecticut, Massachusetts, and is currently applying for such authority in Massachusetts. Therefore, to the extent Verizon "loses" intraLATA toll revenue (either in the form of direct revenue or access charges), Verizon gains significantly when LATA boundary restrictions are lifted, and it can carry toll calls between end users anywhere its network reaches instead of only within LATAs.

exchange where the NXX is addressed are rated as local calls, even though this traffic is terminated to a CLEC customer . . . at a location outside the local calling area.³²

52. The provisions in Verizon's Template Agreement that attempt to restrict the assignment of NXX codes to the customer's physical locations clearly contradict the Commission's previous decisions on this matter. Verizon must not be allowed to impose such restrictions in contravention of Commission policy.

53. The Commission's consideration of this issue may further benefit from considering an analogous circumstance wherein ILECs offer what is essentially a virtual NXX service. It is not unusual for an ILEC customer to desire a "presence" in a location other than the one in which the customer is physically located. In traditional telephone terms, this circumstance is referred to as involving a "foreign" rate center or, more generally, a "foreign exchange" ("FX"). All relevant ILECs – including Verizon– offer FX or FX-like service to accommodate this market demand. Virtually all ILECs' FX offerings – including Verizon's – meet their customer's needs without assessing a toll charge to the calling party.³³

54. The Commission should resolve this issue on the policy level by expressly ruling that Global can utilize NXX codes in an innovative manner³⁴ and that Verizon may

³² See AT&T Arbitration Order, 2001 N.Y. PUC LEXIS 495 at * 47 (July 30, 2001) (citing Case 00-C-0789, *Omnibus Proceeding to Investigate the Interconnection Agreements Between Telephone Companies*, Order Establishing Requirements for the Exchange of Local Traffic (issued Dec. 22, 2000)).

³³ See *Verizon New York, Inc., PSC NY No. 7 – Communications, Limited Service Offerings, Section 6.4.1*.

³⁴ The New York Commission has petitioned the FCC to provide it more control over its numbering system. *In the Matter of New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures*, Order, Dock. No. 96-98, FCC 99-247 14 FCC Rcd 17467 (1999). Therefore, GNAPs' request is complementary to the New York and, presumably, the Massachusetts Commission's desire to use NXX numbers efficiently and effectively.

not deny these uses by attempting to require that the NXX code of the telephone number assigned to a particular customer be linked to the location of that customer's premises or CPE.

55. This policy determination will drive a number of specific changes throughout Verizon's Template Agreement. Thus, the Commission should order the Parties to implement Global's proposed contract language included in Exhibit B. *See* Agreement, Glossary Sections 2.71-2.73, 2.77; Interconnection Attachment Sections 9.2 and 13.

Issue 5: IS IT REASONABLE FOR THE PARTIES TO INCLUDE LANGUAGE IN THE AGREEMENT THAT EXPRESSLY REQUIRES THE PARTIES TO RENEGOTIATE RECIPROCAL COMPENSATION OBLIGATIONS IF CURRENT LAW IS OVERTURNED OR OTHERWISE REVISED?

Global's Position: Yes. There is continuing uncertainty surrounding the question of whether ISP-bound calls are local traffic, subject to reciprocal compensation under 47 U.S.C. § 251(b)(5). Because the FCC's most recent ruling on this issue is currently being challenged before federal appellate courts, there is good reason to include specific language in the Agreement obligating both Parties to renegotiate these issues if current law changes.

Verizon's Position: No. The Parties' should agree to utilize reciprocal compensation for the exchange of "local" traffic, "bill and keep" for "ISP-bound traffic" while compensation for the exchange of "toll" traffic shall be based on retail access rates.

56. Global continues to believe that ISP-bound traffic is local traffic, subject to reciprocal compensation under 47 U.S.C. 251(b)(5). Nonetheless, Global recognizes that the FCC issued a decision finding that ISP-bound calls are a form of "information access" not subject to reciprocal compensation under Section 251(b)(5).³⁵ The FCC, however, made clear that ILECs may not treat ISP-bound calls differently from other calls subject

³⁵ See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-carrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order*, CC Docket Nos. 96-98, 99-68 (rel. Apr. 27, 2001) ("ISP Remand Order").

to compensation under Section 251(b)(5). Instead, the FCC permitted ILECs to elect to subject ISP-bound calls to certain rate- and minute-caps (where the capped rates would apply to *all* compensable calls), or to waive the caps and treat ISP-bound calls just like “plain vanilla” compensable local calls.

57. Global understands that an ILEC’s election likely would turn on its comparison of its own projections of the number and rate of growth of ISP-bound calls (as to which the FCC’s Order allows the ILEC to limit outgoing compensation payments) with its own projections of traffic (such as incoming wireless traffic) as to which the ILEC typically receives substantial compensation payments. By tying the rate that the ILEC must pay for outgoing ISP-bound calls to the rate it is permitted to receive for incoming calls, the FCC creates a significant choice for ILECs. Verizon has chosen to implement the FCC’s rate caps for ISP-bound calls. Correspondingly, Verizon must apply these rate caps to the termination of Global-originated local traffic by Verizon.

58. Moreover, the United States Court of Appeals for the District of Columbia Circuit may modify the FCC’s recent order.³⁶ In these circumstances, Global suggests that the Parties’ interconnection agreement reflect Verizon’s election and expressly recognize that the issue of compensation for ISP-bound calls might need to be revisited if the FCC’s recent Order is stayed, vacated, reversed, or modified during the period that the Parties’ contract is in effect. Further, Global requests that the Commission order the Parties to implement Global’s proposed contract language included in Exhibit B. *See* Agreement, Glossary, Sections 2.42, 2.56, 2.74 – 75; Additional Services Attachment,

³⁶ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, FCC 01-131*, CC Docket Nos. 96-98, 99-68 (rel. Apr. 27, 2001), *appeal docketed*, No. 01-1218 and 01-1274 (consolidated) (D.C. Cir. May 17, 2001).

Section 5.1; Interconnection Attachment, Sections 6.1.1, 7.2, 7.3, and 7.4.

Issue 6: WHETHER TWO-WAY TRUNKING IS AVAILABLE TO GLOBAL AT GLOBAL'S REQUEST.

Global's Position: *Two-way trunking should be available to Global at Global's Request.*

Verizon's Position: *Two-way trunking will be available only upon mutual agreement of the Parties.*

59. Global must have the right to utilize two-way trunking at its own discretion. FCC regulations require ILECs to provide two-way trunking upon request of the CLEC if such trunking is technically feasible.³⁷ Other Commissions have interpreted the FCC regulations on interconnection and found that the CLEC has a right to two-way trunking.³⁸ Therefore, if Global requests two-way trunking to interconnect, two-way trunking should be used. However, Verizon's template language mandates that two-way trunking will be installed by mutual agreement and only where "appropriate." Consistent with its own precedent, the Commission should order the Parties to implement Global's proposed contract language included in Exhibit B. *See* Agreement, Glossary, Sections 2.93-95; Interconnection Attachment, Sections 2.2-2.4.

Issue 7: IS IT APPROPRIATE TO INCORPORATE BY REFERENCE OTHER DOCUMENTS, INCLUDING TARIFFS, INTO THE AGREEMENT INSTEAD OF FULLY SETTING OUT THOSE PROVISIONS IN THE AGREEMENT?

Global's Position: *The four corners of the Agreement control any term or provision that affects the dealings of the Parties. Otherwise, Verizon may unilaterally amend the terms and conditions of the Agreement.*

³⁷ 47 C.F.R. § 51.305(f).

³⁸ *Re New York Telephone Company*, Case 98-C-1306, 95-C-0657, PUR 4th, slip op., (N.Y. P.S.C. 1998) (approving Verizon's proposed tariff offering of two way trunking arrangements to CLECs).

Verizon's Position: It is unclear whether Verizon will limit reference to outside documents, such as tariffs, to simple price references, without the unilateral ability to affect material terms of the Agreement.

60. Global seeks certainty over the terms of the interconnection Agreement. Extraneous documents, including tariffs, may change over time. Therefore, any term or provision that affects the dealings of the Parties should be included in the Agreement itself. Global asserts that if documents such as tariffs and CLEC handbooks are incorporated by reference into this interconnection Agreement, Verizon will have the ability to unilaterally amend the terms and conditions of Agreement. Moreover, interconnection agreements cover services that are separate from tariffs, so Verizon's incorporation of tariffed terms is extraneous and unnecessary.³⁹ Lastly, Verizon's tariffs will apply equally to all of its affected customers irrespective of any cross-references in the interconnection Agreement. Thus, Verizon maintains the opportunity to interact with its customers as it sees fit.

61. Verizon's language is much too open-ended: "The Agreement includes...(b) the Tariffs of each Party applicable to the Services that are offered for sale by it in the Principal Document (which Tariffs are incorporated into and made a part of this Agreement by reference).... "Subject to the requirements of Applicable Law, a Party shall have the right to add, modify, or withdraw, its Tariff(s) at any time, without the consent of, or notice to, the other Party."⁴⁰

62. Under Verizon's proposed language, any tariff referred to in the

³⁹ See e.g. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 610 (1996) ("Section 252 procedures, however, apply only to 'request[s] for interconnection, services, or network elements pursuant to section 251.' Such procedures do not, by their terms, apply to requests for service under section 201.").

⁴⁰ See Template Agreement, General Terms and Conditions, Sections 1.1, 1.3.

interconnection Agreement becomes a part of the Agreement. However, Verizon can unilaterally and without notice change its tariffs referred to in the interconnection Agreement, giving Global no certainty over the very terms it has negotiated and/or arbitrated with Verizon. Thus, the terms of the interconnection Agreement could be an ever-moving target.

63. Global recognizes that the Commission has a policy of allowing Verizon to make competitive service offerings available to CLECs through its tariffs. This policy is predicated, in part at least, on the Commission's desire to ensure that Verizon complies with its obligations under federal and state law, including the provision of UNEs and collocation. Recognizing this to be true Global believes that Verizon can use the process to alter the terms of its interconnection agreements. For this reason, Global requests that the Commission allow Verizon to cross reference its tariffs solely for the purpose of utilizing its tariffed rates for UNEs or collocation.

64. The California PUC recently rebuffed another ILEC's attempts to import extraneous documents (including tariffs) into the four corners of a Commission-approved interconnection Agreement.⁴¹ For the same reasons relied upon by the California PUC, Global requests that the Commission accord Global the right to rely upon terms and conditions negotiated within the context of Sections 251 and 252 of the Act and strike Verizon's references to extraneous documents such as its tariffs, guides and related documentation. Accordingly, the Commission should strike Verizon's references to extraneous documents such as its tariffs, guides, and related documentation, which appear

⁴¹ *Application by Pacific Bell Telephone Company (U 1001 C) for Arbitration of an Interconnection Agreement with MCI Metro Access Transmission Services, L.L.C. (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Final Arbitrator's Report, Application 01-01-010 (Filed January 8, 2001).

throughout the Agreement. *See, e.g.,* Agreement, GT&C Section 1; Interconnection Attachment, Sections 1, 8, 9, 10.6; Network Elements Attachment, Sections 1.1, 1.3, 4.3, 4.4.6, 6.2 and throughout the contract, and the Pricing Attachment.

Issue 8: SHOULD THE INTERCONNECTION AGREEMENT REQUIRE GLOBAL TO OBTAIN EXCESS LIABILITY INSURANCE COVERAGE OF \$10,000,000 AND REQUIRE Global TO ADOPT SPECIFIED POLICY FORMS?

Global's Position: *The interconnection Agreement may require Global to obtain minimum insurance coverage, but these limits should be far lower than those contained in the current Template Agreement and should allow Global to use an umbrella policy in lieu of more specific categories of insurance to meet Verizon's reasonable insurance requirements.*

Verizon's Position: *Global must obtain excess liability insurance coverage of up to \$10,000,000 and must provide insurance coverage in explicitly defined categories.*

65. While any prudent business, and especially interconnecting carriers should maintain reasonable levels of insurance, sound business practice, as well as state and federal law address those requirements. Verizon, however, proposes to force Global to maintain: (1) commercial general liability insurance, on a per occurrence basis, with limits of at least \$2,000,000; (2) commercial motor vehicle liability with limits of at least \$2,000,000; (3) excess liability insurance, in the umbrella form, with limits of at least \$10,000,000; (4) worker's compensation insurance with limits of not less than \$2,000,000 per occurrence; and (5) all risk property insurance on a full replacement cost basis for all of Global's real and personal property at a collocation site or otherwise located on or in any Verizon premises, facility, equipment or right-of-way.

66. Global believes that the level of these insurance requirements is excessive and represents a covert barrier to competition. The Template Agreement does not require Verizon to pay for similar insurance, and therefore Verizon garners a competitive

advantage with each dollar of excessive insurance premiums it imposes upon Global. Global proposes the following reduced limits: commercial General Liability insurance with minimum limits of \$1,000,000, including \$1,000,000 per occurrence; excess liability insurance with a limit of \$1,000,000, and worker's compensation insurance with a limit of \$1,000,000. Global believes Verizon's proposed automobile insurance requirement would both duplicate existing automobile insurance requirements under state law and be excessive in degree, and therefore, should be completely deleted. These are the amounts to which SBC agreed to in other states, and these should be sufficient for Verizon as well.

67. Global also believes that it should be permitted to substitute an umbrella excess liability policy for the insurance minimum limits listed in the preceding section. So long as the relevant potential risks to Verizon, Global, and their customers are adequately covered through one or more policies, the precise form of such insurance should be left to Global's discretion. *See* Agreement, GT&C Section 21.

Issue 9: SHOULD THE INTERCONNECTION AGREEMENT INCLUDE LANGUAGE THAT ALLOWS VERIZON TO AUDIT GLOBAL'S "BOOKS, RECORDS, DOCUMENTS, FACILITIES AND SYSTEMS?"

Global's Position: *The Agreement should not include language that allows either Party to audit the other Party's books, records, documents, facilities and systems.*

Verizon's Position: *Either Party may audit the other Party's books, records, documents, facilities and systems on an annual basis.*

68. Verizon's proposed audit requirements force Global to provide Verizon access to all of its "books, records, documents, facilities, and systems".⁴² Verizon's proposed Template Agreement fails to define these terms, which would permit Verizon unreasonably broad access to competitively sensitive Global records. By invoking such undefined terms, Verizon can arguably access almost any piece of data, analysis or proprietary information that Global has under its control.

69. Global believes that the terms of the proposed Template Agreement are sufficiently clear to ensure compliance with the Agreement for the purposes of billing and record keeping purposes. There is no independent reason to allow Verizon unequivocal access to Global's data, analysis and proprietary information for purposes of compliance with the terms of the Agreement. If Verizon believes that Global has not complied with the terms of the Agreement, it maintains the right to pursue good faith negotiations in the first instance, and, failing that, it may seek legal or equitable relief in the appropriate federal or state forum. For that reason, there is no reason to include language in the Agreement that forces the Parties to open their records for the other Party.

70. The Commission should resolve this issue on a policy level by expressly ruling that the Parties are not required to include audit language in the proposed interconnection Agreement. The Commission should further order the Parties to implement Global's proposed deletion of Verizon's audit language, as illustrated under Section 7 of the General Terms and Conditions of the Agreement in Exhibit B. *See* Agreement, GT&C Section 7; Additional Services Attachment, Section 8.5.4; and Interconnection Attachment, Sections 6.3 and 10.13.

⁴² *See* Template Agreement, General Terms and Conditions, Section 7.

VI. CONCLUSION

71. Global requests that the Commission arbitrate the unresolved issues described above and resolve each issue in Global's favor.

72. Global requests that the Commission find that Global's proposed modifications to Verizon's Template Agreement are reasonable and consistent with the law. Accordingly, Global requests that the Commission approve its revisions to Verizon's Template Agreement, as described above, and grant such other and further relief as the Commission deems appropriate.

Global finally requests that the Commission reaffirm the goals of the Act and allow Global to rationally deploy its network in Massachusetts according to the technical and economic needs of its customers, rather than those of its competitor.

Respectfully submitted,

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On Behalf of Global NAPs, Inc.

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